

## FINAL PRIVATE LETTER RULING

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### REQUEST LETTER

09-014

May 15, 2009

Commissioner Marc Johnson  
Utah State Tax Commission  
210 N 1950 W  
Salt Lake City UT 84116

Re: Request for **Exemption** for **1)** Requirement to Collect Sales Tax on Sales of Items Sold At or Below Cost to Low Income Individuals; and **2)** Requirement to Obtain Temporary Event Permits Prior to the Selling of Such Items

Dear Commissioner Johnson:

On March 1, 2009, NAME, an employee of the DEPARTMENT Special Event Unit, notified the Department that we were required to collect state sales tax on items we sold to the public. She noted that our tax number enabled us to purchase items tax free but that the exemption did not extend to items we sold. In addition, she noted that if the DEPARTMENT sold items at public gatherings such as FAIRS we would also be required to obtain a Temporary Event Permit. We disagree with these findings, and for the reasons discussed below hereby request exemption from the requirement to collect state sales tax and from the requirement to obtain Temporary Permits prior to such events.

#### **Collection of State Sales Tax**

As a government entity, our primary purpose is to provide services to the community. Injury prevention is a primary focus of health. Our main goal with our PROGRAM is to teach the public proper methods to prevent injury. When used properly, infant and child TRANSPORTATION ITEMS are excellent injury prevention tools.

We receive funding from government and private entities to purchase ITEMS and instruct the public on their proper use. In order to recover the cost of implementing the program, a fee is charged primarily to cover the time spent providing one-on-one education to assure the parent knows how to correctly install the TRANSPORTATION ITEM, assure the parent knows how to correctly use the seat, or make sure the helmet is adjusted appropriately for the child. In almost every case the ITEMS is given away as part of the service rendered. The fee is on a sliding scale based on income. This fee in no way covers the cost of the item. The fee is for the service, not the item.

### **Obtaining Temporary Event Permits**

During the course of an average year, our staff attends about NUMBER events and reaches over NUMBER individuals. We estimate that they provide person to person hands on training to over NUMBER parents. Although the impact of this effort is hard to quantify, we know of several children who have escaped serious injury because their parents attended one of our events and learned how to safely use a TRANSPERTATION ITEM.

Since the primary purpose of our injury prevention efforts is to educate, we request an exemption from the requirement to obtain a permit prior to our participation in these events. If you believe we need to provide information to the public we serve that the fee they are paying is for the educational services and not the product being provided, we will do so.

In closing, I would like to note that throughout this discussion, NAME has consistently been professional and pleasant to deal with. She has represented the DEPARTMENT well. If you have any questions or would like to request our testimony, please do not hesitate to contact me at NUMBER.

Sincerely,

NAME  
TITLE  
DEPARTMENT

Cc: NAME  
NAME  
NAME  
NAME  
File

## RESPONSE LETTER

September 15, 2010

NAME  
TITLE  
DEPARTMENT  
ADDRESS  
CITY STATE ZIP

RE: Private Letter Ruling Request—Sales Tax Treatment of DEPARTMENT's Sales

Dear Mr. NAME:

You have requested a ruling on behalf of the DEPARTMENT ("DEPARTMENT") on two issues: first, whether DEPARTMENT is required to collect sales tax on its sales to the public of items such as TRANSPORTATION ITEMS, and second, whether DEPARTMENT is required to obtain a Temporary Event Permit for each health fair or other public event at which it will sell items.<sup>1</sup>

In your request letter, you explained that DEPARTMENT is a government entity, which receives funding from the government and private entities to purchase the TRANSPORTATION ITEMS and to educate the public on their proper use. Through a subsequent telephone conversation, you provided that DEPARTMENT is not a 501(c)(3) organization. In your letter, you continued to explain that DEPARTMENT sells the items and the related education services to the public at approximately NUMBER FAIR and other public gatherings each year. You explained that DEPARTMENT's primary purpose for attending these events is to prevent injuries by educating the public. You also explained that DEPARTMENT charges parents a fee on a sliding scale based on income and that DEPARTMENT provides one-on-one education to the parents, teaching them to correctly install and use the ITEMS and correctly adjust the ITEMS. You said that in almost every case DEPARTMENT gives away the ITEM as part of the services it rendered. You stated that the fees in no way cover the cost of the items. You argue that the fees are for the services, not for the items, and that DEPARTMENT is willing to provide information to the parents that they are paying for the services and not the products, if the Commission believes that is necessary.

### Applicable Law

Utah Code Ann. § 59-12-103(1) states, "A tax is imposed on the purchaser as provided in this part for amounts paid or charged for . . . (a) retail sales of tangible personal property made within the state . . ."

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<sup>1</sup> What you have referred to as a Temporary Event Permit, we have referred to as a Temporary Sales Tax License that is required for a special event.

Utah Code Ann. § 59-12-102(85) defines “purchase price,” in pertinent part, as follows:

- (a) "Purchase price" and "sales price" mean the total amount of consideration:
  - (i) valued in money; and
  - (ii) for which tangible personal property, a product transferred electronically, or services are:
    - (A) sold . . .
- ....
- (b) "Purchase price" and "sales price" include:
  - ....
  - (iii) a charge by the seller for any service necessary to complete the sale . . .
- ....
- (c) "Purchase price" and "sales price" do not include:
  - ....
  - (ii) the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser:
    - (A) [charges for credit extended on the sale]
    - (B) a delivery charge;
    - (C) an installation charge;
    - (D) a manufacturer rebate on a motor vehicle; or
    - (E) a tax or fee legally imposed directly on the consumer.

Utah Code Ann. § 59-12-104(2) exempts “sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of [construction materials unless an exception applies].”

Utah Code Ann. § 59-12-104(41) exempts: “(a) sales of photocopies by: (i) a governmental entity; . . . ; or (b) sales of publications by a governmental entity.”

Utah Code Ann. § 59-12-104(8) exempts: “sales made to or by . . . charitable institutions in the conduct of their regular . . . charitable functions and activities . . .”

Utah Admin. Code R865-19S-43A (“Rule 43A.”) limits religious or charitable institutions to 501(c)(3) organizations, stating:

In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

Utah Tax Commission Publication 38, titled “Doing Business in Utah: A Guide to Business Information,” on page 6-10, states:

### **Special Events Registration**

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A Temporary Sales Tax License and Special Return is required when an individual seller or business participates in a one-time event, such as FAIRS, conventions, hobby shows, gun shows, food shows, art shows, and other similar events where taxable sales are made. Sellers with a Sales and Use Tax License must also obtain a Temporary Sales Tax License and Special Return if participating in one of these events. The license/return is only good for the event for which it is issued. The special return and all sales tax collected are due to the Tax Commission 10 days after the close of the special event or sale. To obtain a Temporary Sales Tax License and Special Return, contact the Special Events Taxation Section.<sup>2</sup>

The Special Events webpage on the Tax Commission's website, available at <http://tax.utah.gov/sales/specialevents.html>, provides in part:

**What is a Special Event?**

A one-time event or an event that runs for 6 months or less where taxable sales are being made and sales tax must be collected. . . .

**How to Report & Remit Tax**

1. Contact the Special Events Unit for a temporary license at (801) 297-6303 or at 1-800-662-4335, ext. 6303 or by email at [specialevent@utah.gov](mailto:specialevent@utah.gov).
2. Use Form TC-790C, Temporary Sales Tax License and Special Return to report and to pay the taxes collected at a special event. The form is available by calling the Special Events Unit at the numbers listed above.
3. Use the sales tax rate in effect at the location where the sales will take place.
4. If the vendor has a permanent sales tax license, the vendor:
  - a. Reports and remits the sales tax from the event on Form TC-790C, in addition to reporting it on the vendor's regular sales tax return(s).
  - b. Sales for special events should be included in the gross sales reported on Line 1 of the regular sales tax return and any credits for special event sales should be reversed as an adjustment on Line 6.
  - c. These reporting requirements will provide an audit trail should the Tax Commission audit the business records.
5. File the temporary license/return and remit full payment within 10 days after the close of the special event or sale. In some cases, the return and payment will be collected on the last day of the event by agents covering the sale for the Utah State Tax Commission.

Analysis

DEPARTMENT is selling tangible personal property, even though DEPARTMENT believes otherwise. In determining taxability, the Utah Supreme Court has applied a "primary object" or "essence of the transaction" test. See *Eaton Kenway, Inc. v. Auditing Division*, 906 P.2d 882 (1995) and *B.J.-Titan Services v. State Tax Comm'n*, 842 P.2d 822, 825 (Utah 1992). In *B.J.-Titan*, the Court explained the "essence of the transaction" test as follows:

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<sup>2</sup> Publication 38 is available on-line at <http://tax.utah.gov/forms/pubs/pub-38.pdf>.

[T]he essence of the transaction theory, focuses on the nature of what was sold and whether it primarily entails tangible personal property. This theory examines the transaction as a whole to determine whether the essence of the transaction is one for services or for tangible personal property. The analysis typically requires a determination either that the services provided are merely incidental to an essentially personal property transaction or that the property provided is merely incidental to an essentially service transaction.

Applying this test, the Commission finds that the parents are primarily purchasing the ITEMS, not the educational services. DEPARTMENT sales are essentially personal property transactions. The educational services provided are merely incidental. This conclusion does not change even though (1) DEPARTMENT's primary purpose is to educate the public and (2) the fee is based on a sliding scale and may be less than the cost of the ITEMS. Importantly for (1), the parents' primary purpose is to obtain the property. For (2), there is no requirement that a sales price exceed the cost of the item sold. Therefore, DEPARTMENT's sales are taxable under § 59-12-103(1) unless an exemption applies.

There are three reasons why the conclusion above does not change even if DEPARTMENT were to separately state the educational costs. First, the essence of the transaction test looks at the transaction as a whole; separately stating the fees for the educational services does not change DEPARTMENT sales as a whole. Second, if the educational fees were separately listed, they would still be part of the purchase price of the property. Under § 59-12-102(82)(b)(iii), the fees for education are part of the purchase price because they are "a charge by the seller for any service necessary to complete the sale." Third, while § 59-12-102(82)(c)(ii) provides different treatment of certain, specific charges when they are separately stated, a charge for educational services is not one of these charges.

DEPARTMENT'S sales are not exempt even though DEPARTMENT is a government entity. Section 59-12-104(2) exempts certain sales to government entities, but it does not exempt sales by those entities. Thus, § 59-12-104(2) does not exempt DEPARTMENT'S sales. Section 59-12-104(41) exempts certain sales by government entities, but the section limits those sales to photocopies and government publications. Therefore, § 59-12-104(41) cannot apply to DEPARTMENT's sales of TRANSPORTATION ITEMS. There are no other exemptions for government entities in § 59-12-104 to apply to this case.

DEPARTMENT cannot qualify for an exemption under § 59-12-104(8) because DEPARTMENT is not a 501(c)(3) nonprofit entity. Section 59-12-104(8) exempts sales by a charitable institution when the institution sells a taxable product as part of its regular charitable functions or activities. But, Rule 43A. requires entities to have the 501(c)(3) status to qualify for the sales tax exemption. Even though its primary purpose of preventing injuries seems charitable, DEPARTMENT cannot receive the exemption under § 59-12-104(8) because it is not a 501(c)(3) organization.

DEPARTMENT must obtain a Temporary Sales Tax License and complete a Special Return for each special event at which it sells property. According to the Special Events

webpage, a special event is a “one-time event or an event that runs for 6 months or less where taxable sales are being made and sales tax must be collected.” The FAIRS meet this definition. As instructed on the Special Event webpage, “Sellers with a Sales and Use Tax License must also obtain a Temporary Sales Tax License and Special Return if participating in one of these events,” and Sellers must collect tax based on “the sales tax rate in effect at the location where the sales will take place.” The licensing and reporting requirements of special events ensure that the sales tax revenues are distributed to the appropriate local jurisdictions. Therefore, for each health fair or other similar event, DEPARTMENT must obtain a Temporary Sales Tax License and complete a Special Return. The number of events at which DEPARTMENT participates does not change this conclusion.

### Conclusion<sup>3</sup>

DEPARTMENT is required to collect sales tax on its sales of TRANSPORTATION ITEMS to patrons at the FAIR other public gatherings. Also, DEPARTMENT is required to obtain a Temporary Sales Tax License for each public gathering at which it sells property such as TRANSPORTATION ITEMS. Our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact us.

For the Commission,

Marc B. Johnson  
Commissioner

MBJ/aln  
09-014

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<sup>3</sup> This is a 3 to 1 ruling. Commissioner Dixon disagrees with this ruling. Commissioner Dixon writes: “The PLR incorrectly concludes the patrons of DEPARTMENT are the ones who determine the object of DEPARTMENT transactions. In fact DEPARTMENT is very clear about the object of its transactions. The mission and purpose of the DEPARTMENT and the programs in question is to promote safety through education. To this end DEPARTMENT conducts a number of educational outreach programs done in part through their PROGRAMS some conducted at FAIRS. (I take administrative note of this on the DEPARTMENT public website). The DEPARTMENT is very clear on what it is offering or selling and those offerings are non-taxable educational services. A nominal fee charged to each participant for the educational services is determined on a sliding income scale; the DEPARTMENT stated the nominal fee would not cover the cost of the educational services, let alone the products. There is no reason not to accept this statement as factual and truthful. The DEPARTMENT is the consumer of any products (ITEMS) it may give away at the end of an educational service, class or seminar (the DEPARTMENT tax number allows it to purchase items tax free, which is not at issue in this ruling). Based on the facts as presented, I would hold DEPARTMENT does not need to obtain a Temporary Sales Tax License for educational outreach services conducted at FAIRS or other public gatherings and events because it does not need to collect sales tax on products it gives away as part of its non-taxable educational services.”